

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CAMILLE SMITH, JERRY PROVINCE, SAMUEL RAMOS, AND JOSE MORALES, suing on behalf of themselves and all others similarly situated,

Plaintiffs,

-against-

DAVID PATERSON; BRIAN FISCHER; GLENN GOORD; RICHARD DeSIMONE; and JOHN DOES, Nos. 1-150 (members of the New York State Department of Correctional Services whose names are presently unknown to plaintiff),

Defendants.

08 Civ. 3313 (SHS)

DECLARATION OF JOSE MORALES

JOSE MORALES, pursuant to 28 U.S.C. § 1746, declares as follows:

I am a named plaintiff in this action. I make this declaration in support of plaintiffs' motion for a temporary restraining order and preliminary injunction.

On June 29, 1999, Judge Deborah Dowling, Supreme Court, Kings County, sentenced me to a determinate four-year prison term upon my plea of guilty to Attempted Robbery in the 2nd Degree on Indictment No. 2808/99 and a concurrent one-to-three year prison term of imprisonment for violating probation on Indictment No. 4804/98. There was no discussion of post-release supervision during plea negotiations. Judge Dowling did not mention post-release supervision during my plea or at my sentencing and did not sentence me to any period of post-release supervision. My sentencing commitment sheet does not include a period of post-release supervision. Attached as Exhibits A, B, and C are copies of the plea minutes, sentencing minutes and the sentencing commitment sheet.

At some time after Judge Dowling's sentence, the New York State Department of Correctional Services ("DOCS") administratively imposed a five-year period of post-release supervision on me. I first heard of the period of post-release supervision shortly before my release from prison on or about August 24, 2002.

Since completing my court imposed sentence, I have been incarcerated twice for alleged violations of the terms and conditions of my administratively imposed post-release supervision. From mid-January, 2007 to May 22, 2007 I was incarcerated solely for a violation of said post release supervision and missed the birth of my daughter Harmoney Morales on April 11, 2007.

On April 1, 2008, I was again incarcerated solely for an alleged violation of said post release supervision and am presently incarcerated at Rikers Island Correctional Facility.

Attached as Exhibit D is a copy of my "inmate information" downloaded from the DOCS website, stating that my post-release supervision does not expire until August 28, 2008 (at the earliest).

The Legal Aid Society has filed a petition for writ of habeas corpus on my behalf in Supreme Court, Bronx County. I was seen in "writ court" on Rikers Island today, April 9, 2008, and my petition was adjourned until April 30, 2008. My Legal Aid attorney told me that the defendants have two weeks to file a response and it will be several weeks before the court decides my petition.

I am presently married to April Morales. We have a daughter, Harmoney Morales, who will be celebrating her first birthday on Friday, April 11, 2008. My wife is pregnant with our second child and she is due to give birth on May 2, 2008. My wife told me that her doctor told her that she is beginning to dilate and that she must stay off her feet as much as possible.

I declare under penalty of perjury that the foregoing is true and correct with respect to factual matters within my actual knowledge.

Executed in Queens, New York, this 9th day of April 2008


JOSE MORALES

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF KINGS : CRIMINAL TERM : PART 19

-----x

THE PEOPLE OF THE STATE OF NEW YORK : Indictment Nos.
2808/99
-against- : 4804/98

JOSE MORALES, :

Defendant :

Sentence

-----x

360 Adams Street
Brooklyn, New York

July 16, 1999

BEFORE: HONORABLE DEBORAH A. DOWLING, Justice

APPEARANCES:

For the People:

CHARLES J. HYNES, ESQ.
District Attorney, Kings County
BY: GERRIANNE ABRIANO, ESQ.
Assistant District Attorney

For the Defendant:

MARGARET BAKER, ESQ.

Also Present:

PROBATION OFFICER JACINTA BROWN

Frances Napoli
Senior Court Reporter

Proceedings

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1 THE CLERK: Number 16, 2808 of '99, Jose
2 Morales. Present.

3 MS. BAKER: Legal Aid Society, by Margaret
4 Baker for Mr. Morales.

5 THE CLERK: Also on the violation of
6 probation calendar, 4804 of '98.

7 MS. BROWN: Probation Officer Jacinta Brown.
8 I have specs for the Court and a copy for
9 counsel.

10 (Handing)

11 THE COURT: He pled guilty to specification
12 one with the Court's promised sentence being one to
13 three years incarceration and the defendant's
14 probation would be terminated and time would run
15 concurrently.

16 Have all parties had an opportunity to
17 review the presentence report?

18 MS. ABRIANO: Yes, Judge.

19 MS. BAKER: Yes, your Honor.

20 MS. ABRIANO: People are requesting a final
21 order of protection.

22 THE COURT: Anything you wish to say,
23 Ms. Baker, or anything you client, Mr. Morales,
24 wishes to say at this time?

25 MS. BAKER: I'll rely on the promised

Proceedings

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1 sentence, your Honor.

2 THE COURT: Mr. Morales, again, for the
3 record, you understand English; is that correct?

4 THE DEFENDANT: Yes.

5 THE COURT: Mr. Morales, you will be
6 sentenced to the agreed upon promised sentence of
7 four years incarceration.

8 THE CLERK: I don't think he was arraigned a
9 predicate.

10 THE COURT: Defendant was adjudicated a
11 second felony offender the last time the case was on.

12 THE CLERK: In reference to 2808 of '99, the
13 sentence is four years.

14 THE COURT: Incarceration. And that
15 sentence will run concurrently with Indictment Number
16 4804 of '98, which a violation of probation.

17 THE CLERK: The sentence on that case, Judge
18 would be --

19 THE COURT: You're sentenced, Mr. Morales,
20 to the agreed upon promised sentence of one to three
21 years incarceration and that will run concurrently
22 with your sentence under Indictment Number 2808 of
23 '99. And your probation is revoked.

24 I would also have to impose a mandatory
25 surcharge on your current case of \$150 and five

Proceedings

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1 dollars for the crime victim assistance fee for the
2 total of \$155 and that will be taken out of inmate
3 funds.

4 Again, the Court will, in fact, sign a full
5 stay away order of protection in this matter.

6 Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: The defendant's probation will
9 be unfavorably revoked as a result of the violation.

10 * * *

11 The foregoing is certified to be a true and
12 correct transcript of the proceedings, as taken by:

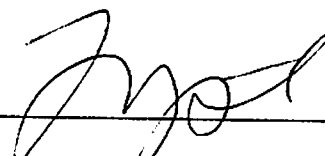
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16 Official Court Reporter

EXHIBIT B

1 COURT SUPREME OF THE STATE OF NEW YORK

2 COUNTY OF KINGS: CRIMINAL TERM : PART

3 THE PEOPLE OF THE STATE OF NEW YORK

4 - against -

5 JOSE MORALES,

6 Defendant.

7 Indict #2808/99

8 VOP #4804/98

360 Adams Street
Brooklyn, New York
June 29, 1999

9
10 B E F O R E : HONORABLE DEBORAH DOWLING

Justice

11
12 A P P E A R A N C E S :

13
14 CHARLES J. HYNES, ESQ.

15 DISTRICT ATTORNEY - KINGS COUNTY
for the People

16 BY: GERIANNE ABRIANO, ESQ.

Assistant District Attorney

17
18 MARGARET BAKER, ESQ.

Attorney for the Defendant

19
20 Margaret Breitfeller, RPR
Official Court Reporter

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COURT CLERK: This is number 20
and also number 24, Indictment 2808 of '99,
the defendant, Jose Morales and VOP
Indictment #4804/98.

MS. BAKER: Margaret Baker for Mr.
Morales.

MS. ABRIANO: Judge, I do have
also an offer that's being related to the
defendant today only.

THE COURT: Just a moment. I
thought there should also be a decision on
the Grand Jury minutes.

Do we have it?

COURT CLERK: Wait a second.

THE COURT: The Court is serving a
copy of its decision on both sides and also
returning the Grand Jury minutes to the
People.

MS. ABRIANO: The offer has been
five years. We're willing to offer the
defendant today only four years on a plea to
attempt rob, in the second degree. After
today, the offer is withdrawn and --

MS. BAKER: Your Honor, could we

Proceedings

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1 approach briefly?

2 THE COURT: Certainly.

3 (Discussion held at the bench, off
4 the record.)

5 (The discussion off the record
6 concluded, and the following occurred in
7 open court:)

8 MS. BAKER: Thank you.

9 Your Honor, I spoke to Mr. Morales
10 about the People's offer and about the bench
11 conference we just had. It is my
12 understanding he is interested in the four
13 years.

14 It also my understanding that Your
15 Honor will give him concurrent time or
16 terminate probation.

17 Let me just say this, he will not
18 do additional time on top of four years.

19 THE COURT: That's correct.

20 MS. BAKER: At this time
21 Mr. Morales has authorized me to enter a plea
22 of guilty on his behalf to attempted robbery
23 in the second degree, a class D felony, upon
24 the promised sentence of four years.

25 COURT CLERK: He's a predicate,

Proceedings

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1 right?

2 MS. BAKER: Yes.

3 COURT CLERK: Thank you.

4 THE COURT: Mr. Morales, do you
5 understand English, sir?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you have any
8 questions or doubt in your mind about your
9 case?

10 The time to get them answered is
11 before you decide to go through with this
12 guilty plea. Once you inter this guilty plea
13 it becomes final and binding. You will not be
14 in a position to come back to this court on
15 any other date to say you are not guilty or
16 you want to take back the guilty plea. Is
17 that understood by you?

18 THE DEFENDANT: Yes.

19 COURT CLERK: First just raise
20 your right hand.

21 J O S E M O R A L E S,
22 the defendant herein, called as a witness, having been first
23 duly sworn, testified as follows:

24 COURT CLERK: Put your hand down.

25 Your name is Jose Morales, is that

Proceedings

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1 right?

2 THE DEFENDANT: Yes.

3 COURT CLERK: There is waiver
4 there for him. That is a waiver of appeal,
5 counsel.

6 (Whereupon, a discussion was held
7 off the record with attorney and defendant.)

8 MS. BAKER: I explained the waiver
9 to Mr. Morales. He has executed it.

10 THE COURT: Mr. Morales,
11 certainly, as a defendant the right to appeal
12 is an important right that every defendant
13 has and that would include you, sir.

14 Certainly, as to that right to
15 appeal, you are signing a waiver of that
16 right to appeal. And the form that you sign
17 indicates that you have been advised of your
18 right to take an appeal and to prosecute the
19 appeal as a poor person and to have an
20 attorney assigned to you in the event you are
21 unable to afford an attorney, sir, and have
22 that attorney submit a brief and argue before
23 any Appellate court on any issues relating to
24 your conviction and sentence, other than that
25 sentence on the negotiated pleas, that they

Proceedings

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1 were harsh or excessive.

2 Have you had an opportunity to go
3 over this form with your attorney and discuss
4 it, sir?

5 THE DEFENDANT: Yes.

6 THE COURT: After going over this
7 form, sir, it is your decision to sign that
8 waiver of your right to appeal, that you are
9 giving up your right to appeal on this case,
10 sir?

11 THE DEFENDANT: Yes.

12 THE COURT: You are doing that of
13 your own free will?

14 THE DEFENDANT: Yes.

15 THE COURT: Again, you should be
16 made aware there will be no appeal from the
17 plea and sentence.

18 Do you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: Mr. Morales, again, as
21 I said, if you have any questions or doubts
22 about the case, you have to get them answered
23 before you decide to go through with the
24 guilty plea.

25 Mr. Morales, I will be asking you a

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1 series of questions. If you don't understand
2 my questions, you'll let me know and I'll
3 rephrase them in such a way that you will be
4 able to understand them or if you feel the
5 need to speak to your attorney during the
6 course of my questions to you, you let me
7 know and I'll give you the opportunity to
8 speak to your attorney, sir.

9 Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: How old are you?

12 THE DEFENDANT: Twenty-one.

13 THE COURT: Do you understand
14 English, sir?

15 THE DEFENDANT: Yes.

16 THE COURT: What was the last
17 grade you completed in school?

18 THE DEFENDANT: Nine.

19 THE COURT: Before your arrest,
20 were you working, sir?

21 THE DEFENDANT: No.

22 THE COURT: As you stand here
23 today, do you feel in good physical and
24 mental health, Mr. Morales?

25 THE DEFENDANT: Yes.

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1 THE COURT: Have you taken any
2 drugs, alcohol or medication within the last
3 24 hours?

4 THE DEFENDANT: No.

5 THE COURT: Have you ever been
6 treated or confined to any hospital for any
7 mental illness or disorder, Mr. Morales?

8 THE DEFENDANT: No.

9 THE COURT: After discussing this
10 matter with your attorney, it is your
11 decision to go through with this guilty plea
12 sir, to this D felony, which is a crime, sir?

13 THE DEFENDANT: Yes.

14 THE COURT: Are you satisfied with
15 the way in which your attorney has
16 represented you on this case, Mr. Morales?

17 THE DEFENDANT: Yes.

18 THE COURT: Mr. Morales, as a
19 defendant you would be giving up certain
20 valuable rights you have in exchange for
21 entering this guilty plea today. Those
22 rights that you would be giving up would
23 include your right to have a trial by jury,
24 sir. You would be giving up that valuable
25 right in exchange for entering this guilty

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1 plea.

2 Do you wish to give up that
3 valuable right, Mr. Morales?

4 THE DEFENDANT: Yes.

5 THE COURT: It is understood also
6 you'd be giving up the right to have your
7 attorney cross-examine any witnesses that
8 might be called by the District Attorney's
9 office and to call witnesses that might
10 testify on your behalf, which is a valuable
11 right.

12 Do you wish to give up that right
13 in exchange for entering this guilty plea?

14 THE DEFENDANT: Yes.

15 THE COURT: You'd also be giving
16 up your right to remain silent.

17 Mr. Morales, as a defendant if you
18 wanted to have a trial before this Court, you
19 would have a right to have a trial and not
20 testify at your trial, okay.

21 By entering this guilty plea, you
22 would be giving up that right to remain
23 silent in exchange for entering this guilty
24 plea.

25 Do you wish to give up that

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1 valuable right, sir?

2 THE DEFENDANT: Yes.

3 THE COURT: You'd also be giving
4 up the right to have the People prove your
5 guilt beyond a reasonable doubt.

6 Do you wish to give up that right,
7 sir?

8 THE DEFENDANT: Yes.

9 THE COURT: Mr. Morales,
10 understand that by entering this guilty plea,
11 it would have the same force and affect as
12 though you had a trial before a jury and were
13 convicted after the trial.

14 Do you understand that, sir?

15 THE DEFENDANT: Yes.

16 THE COURT: Mr. Morales, has
17 anyone threatened you or forced you or coerced
18 you in any way, sir, in order to make you
19 enter in to this guilty plea, sir?

20 THE DEFENDANT: No.

21 THE COURT: You are entering this
22 guilty plea of your own free will, sir, is
23 that correct?

24 THE DEFENDANT: Yes.

25 THE COURT: Are you currently on

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1 probation or parole?

2 THE DEFENDANT: Yes.

3 THE COURT: I am aware that as
4 part of the violation of probation that you
5 had before me under Indictment 4804 of '98,
6 it will be the Court's position to have the
7 defendant probably enter a guilty plea to one
8 of the specifications and I will be inclined
9 to sentence him to one to three years to run
10 concurrent with Indictment number 2808 of
11 '99.

12 MS. BAKER: That is understood,
13 Your Honor.

14 THE COURT: Certainly, I will say
15 to you, other than the promises that I have
16 just made to you, that being that you would
17 be sentenced to four years of incarceration
18 on Indictment 2808 of '99 and being sentenced
19 to a violation of probation under Indictment
20 4804 of '98 of one to three years, that time
21 to run concurrent, has any other promises
22 been made to you in regards to your case,
23 sir?

24 THE DEFENDANT: No.

25 THE COURT: No.

Proceedings

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1 Mr. Morales, you are going to tell
2 me what happened April 1st, 1999 at
3 approximately 12:50 a.m at Glenwood Avenue
4 and East 34th Street in Kings County in
5 Brooklyn, sir.

6 Mr. Morales.

7 THE DEFENDANT: Um, I approached
8 Rozine (ph).

9 THE COURT: You have to keep your
10 voice up.

11 THE DEFENDANT: I approached
12 Rozine and asked him to remove his CD player
13 and took his wallet and told him to take off
14 his jacket.

15 THE COURT: At the time that you
16 asked for that property, you knew that you
17 had no right to remove that property from
18 that individual, is that correct, sir?

19 THE DEFENDANT: Yes.

20 THE COURT: Did you threaten to
21 use any force or attempt to use any force in
22 order to get him to remove that property?

23 THE DEFENDANT: No.

24 THE COURT: Did you display
25 anything, sir, or what did you tell him?

Proceedings

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1 THE DEFENDANT: Can I speak with
2 my lawyer?

3 THE COURT: Certainly.

4 (Whereupon, a discussion was held
5 off the record with defendant and attorney.)

6 MS. BAKER: He's ready to proceed,
7 Your Honor. I believe that he is pleading to
8 robbery in the second degree acting in
9 concert and there were other individuals
10 there. I have discussed that with him. He
11 is prepared to proceed.

12 THE COURT: Certainly.

13 Were there other individuals with
14 you at that time, sir?

15 THE DEFENDANT: Yes.

16 THE COURT: Did anyone else during
17 the course of that incident either threaten
18 to use force against the complaining witness?

19 THE DEFENDANT: Yes.

20 THE COURT: Do you know what they
21 said to the individual or if they displayed
22 any weapons?

23 THE DEFENDANT: They made a
24 gesture like, don't shoot.

25 (Indicating.)

Proceedings

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1 MS. BAKER: They made a gesture as
2 if reaching for a weapon.

3 THE COURT: I need to hear that
4 from the --

5 THE DEFENDANT: They made a
6 gesture as if don't shoot him. That is what
7 they said, don't shoot him.

8 THE COURT: Okay. Well, did the
9 individuals that you were with indicate that
10 they had a weapon to shoot the complaining
11 witness which would have caused him to say,
12 don't shoot?

13 THE DEFENDANT: Yeah. Yes.

14 THE COURT: Okay.
15 How did they simulate that, if you
16 know?

17 THE DEFENDANT: Opening the
18 jacket.

19 THE COURT: Is that acceptable to
20 the People?

21 MS. ABRIANO: Yes.

22 THE COURT: Are you guilty, sir?

23 THE DEFENDANT: Yes.

24 THE COURT: Of attempted robbery
25 in the second degree, Mr. Morales?

Proceedings

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1 THE DEFENDANT: Yes.

2 THE COURT: Is there any doubt in
3 your mind as to whether, in fact, you wish to
4 go forward with this guilty plea?

5 THE DEFENDANT: No.

6 THE COURT: Certainly, as I have
7 indicated to you, Mr. Morales, the statements
8 that you've made to me have all been under
9 oath. You do understand the seriousness of
10 an oath, is that correct, sir?

11 THE DEFENDANT: Yes.

12 THE COURT: If you have lied to me
13 in any of the answers you have given to me in
14 response to my questions that will not be
15 reason to come back and take back the guilty
16 plea today.

17 Certainly, the only way you will be
18 permitted to take back the guilty plea that
19 you entered today is if the Department of
20 Probation finds there is something in your
21 background they believe due to what they
22 discovered, you should not be entitled to the
23 four years incarceration, that you should be
24 sentenced to a greater amount of time. Under
25 those circumstances, if I cannot keep my

Proceedings

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1 promised sentence to you of four years
2 incarceration, I am going to allow you to
3 take back your guilty plea.

4 I will not allow you to take it
5 back you if you come back in to court and
6 say: You know what, I am not guilty or I just
7 changed my mind, I don't want to go through
8 with it.

9 It is going to be too late to raise
10 those issues on any other date.

11 Is that understood by you, sir?

12 THE DEFENDANT: Yes.

13 THE COURT: Are you a citizen of
14 the United States?

15 THE DEFENDANT: Yes.

16 THE COURT: Certainly, the Court
17 is satisfied that the defendant understands
18 the nature of the charges and the nature of
19 the plea that he has entered on this case, is
20 willing to assume the responsibility for his
21 guilt in this matter.

22 The Court believes it's in the
23 interest of justice to accept this plea from
24 the defendant.

25 COURT CLERK: Your name once again

Proceedings

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1 is Jose Morales, right?

2 THE DEFENDANT: Yes.

3 COURT CLERK: Ms. Baker is your
4 lawyer?

5 THE DEFENDANT: Yes.

6 COURT CLERK: Before accepting
7 your plea of guilty to a felony, you are
8 advised if you have previously been convicted
9 or been sentenced for a prior felony as
10 defined in the Penal Law, that fact may be
11 established and then you may be subjected to
12 different or additional punishment.

13 After being advised of this, do you
14 now want to withdraw your not guilty plea,
15 which you have entered up until today to
16 Indictment 2808 of 1999 and now at this time
17 to plead guilty to the crime of attempted
18 robbery in the second degree, which is a
19 felony, in full satisfaction of that
20 indictment? Is that what you want to do
21 today is plead guilty?

22 THE DEFENDANT: Yes.

23 COURT CLERK: Now at this time the
24 District Attorney of Kings County has filed a
25 statement with the Court alleging that you,

Proceedings

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1 Jose Morales, have previously been convicted
2 and been sentenced for a prior felony and
3 that in accordance with the Criminal
4 Procedure Law Section 400, you may be a
5 second felony offender.

6 Have you received a copy of that
7 statement?

8 THE DEFENDANT: Yes.

9 COURT CLERK: Have you looked it
10 over and discussed it with your attorney?

11 THE DEFENDANT: Yes.

12 COURT CLERK: The statement says
13 that you, Jose Morales, were convicted of the
14 crime of attempted criminal sale of a
15 controlled substance in the third degree, a
16 felony in Kings County under Indictment 4804
17 of 1998 and sentenced for that crime on
18 August 14 of 1998.

19 Now, Mr. Morales, you may admit,
20 deny or stand mute as to being the person
21 named on that statement.

22 You also have the right to contest
23 any of the allegations made against you on
24 that statement.

25 If you do contest any, you may be

Proceedings

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1 entitled to a hearing before this Court
2 without a jury.

3 Now do you admit that you are the
4 person on that statement?

5 THE DEFENDANT: Yes.

6 COURT CLERK: Do you want to
7 contest any allegations made against you on
8 that statement?

9 THE DEFENDANT: No.

10 COURT CLERK: Are you raising any
11 objection at all to that previous conviction
12 listed there that is obtained in violation of
13 any of your constitutional rights?

14 THE DEFENDANT: No.

15 COURT CLERK: The defendant has no
16 objections to the predicate statement.

17 THE COURT: Also, the issue of the
18 violation of probation.

19 Certainly, you have been served
20 with a copy of specifications by the
21 Department of Probation, specification number
22 one.

23 MS. BAKER: I apologize, Your
24 Honor, I actually haven't been served with
25 them. I believe it is the first day it has

Proceedings

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1 been on.

2 THE COURT: I'll give you an
3 opportunity to review it, Ms. Baker.

4 (Document given to the attorney.)

5 THE COURT: Certainly, it will
6 indicate that the defendant has failed to
7 lead a law-abiding life in that he was
8 arrested under Indictment 2808 of '99, which
9 violates his probation.

10 MS. BAKER: Thank you.

11 THE COURT: Certainly, as a
12 defendant you would have a right to have a
13 hearing on the issue of the violation of
14 probation.

15 If you chose to go the route of
16 having a hearing, I feel obligated to tell
17 you that, certainly, or you can admit that,
18 in fact, based upon the guilty plea that you
19 just entered that, in fact, you have failed
20 to lead a law-abiding life. You were
21 arrested and are guilty of attempted robbery
22 in the second degree.

23 Again, as I said, by admitting that
24 you would be admitting you are in violation
25 of your probation.

Proceedings

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1 THE DEFENDANT: I understand.

2 MS. BAKER: I think we're prepared
3 to go forward today with that, Your Honor.

4 THE COURT: Are you entering a
5 plea of guilty to a violation of
6 specification number one?

7 THE DEFENDANT: Yes.

8 THE COURT: Which is that you
9 failed to lead a law-abiding life, is that
10 correct, sir?

11 THE DEFENDANT: Yes.

12 THE COURT: You are asking to be
13 sentenced on that as well?

14 THE DEFENDANT: Yes.

15 THE COURT: Certainly, I will say
16 to you that on the date you return to court
17 to be sentenced, it is the Court's intention
18 to sentence you to one to three years of
19 incarceration on the violation of probation.
20 Certainly, at that point it would revoke your
21 probation and it would be terminated.

22 COURT CLERK: Judge, he is adjudged
23 a second felony offender?

24 THE COURT: Yes.

25 COURT CLERK: He'll be remanded on

Proceedings

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1 each case, Judge?

2 THE COURT: That's correct.

3 On the date when you return to
4 court, you will be sentenced on each case and
5 the time will return concurrently. The
6 violation of probation should not add any
7 additional time to your jail sentence of four
8 years.

9 Also, at that time on the new
10 matter, which is Indictment 2808 of '99, I
11 will have to impose a mandatory surcharge.

12 COURT CLERK: Sentencing date will
13 be July 16th.

14 MS. BAKER: Can I have the
15 following Monday, if possible.

16 THE COURT: Either 14th or 15th.

17 COURT CLERK: How about the 15th?

18 MS. BAKER: I'll stick with the
19 16th.

20 COURT CLERK: July 16.

21 Remand on each case. Here's his
22 papers.

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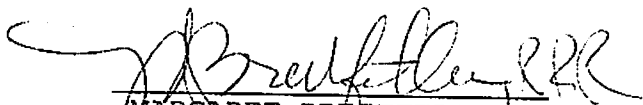
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Proceedings

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REPORTER'S CERTIFICATION

I hereby certify that the foregoing is a
true and accurate transcript of the
proceedings.


MARGARET BREITFELLER, RPR
Official Court Reporter

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Margaret Breitfeller, RPR
Official Court Reporter
New York State Supreme Court
360 Adams Street - Room 627-A
Brooklyn, New York 11201
347-296-1398
SS # 143.58.1459

May 30, 2007

To:

JOSE MORALES

Attention: JOSE MORALES

TITLE OF ACTION: PEOPLE-V-JOSE MORALES
INDEX CASE NO: INDICTMENTS #2808/99 AND 4804/98

DATE OF PROCEEDING: June 29, 1999

PAGES: 22 PAGES - IMMEDIATE COPY

For transcript of testimony in the above-entitled case. The original certified copy of the transcript will be filed with the Clerk of the Court upon receipt of check.

The amount below represents your cost of the transcript.

Total Due and owing: \$143.00

Thank You

EXHIBIT C

NEW YORK STATE SUPREME COURT
Sentence and Order of Commitment Kings County, Criminal Term

The People of the State of New York
 vs

JOSE MORALE

Defendant

☐ S.C.I.

Indictment No.

Date 7-16-98 Part 19

Justice

Court Reporter

M 11-6-77 8.3.04.6.28.2
 Sex D.O.B. NYSID

The defendant having been
 convicted of the crime/s of:

it is the Judgment of the Court that the defendant is hereby sentenced to a term
 of imprisonment:

☐ Adjudicated a Youthful Offender

CRIME	No. of Counts	Counts are to run		Minimum Years	Maximum Years	<input type="checkbox"/> Indeterminate <input checked="" type="checkbox"/> Determinate <input type="checkbox"/> Definite (Specify: days, mos. or yrs)
		Concur.	Consec.			
<u>Att ROB 2^d</u>	<u>1</u>	<input type="checkbox"/>	<input type="checkbox"/>			<u>4 YRS</u>
2. _____	_____	<input type="checkbox"/>	<input type="checkbox"/>			
3. _____	_____	<input type="checkbox"/>	<input type="checkbox"/>			
4. _____	_____	<input type="checkbox"/>	<input type="checkbox"/>			
5. _____	_____	<input type="checkbox"/>	<input type="checkbox"/>			

The sentence on all Crimes is to run CONCURRENTLY unless otherwise indicated:

Crimes numbered _____ shall run CONSECUTIVELY.

☐ Sentenced to Parole Supervision (410.91 CPL)

☐ Designated a SEX OFFENDER

As a: ☒ Second Felony Offender ☐ Second Violent Felony Offender ☐ Persistent Felony Offender
☐ Persistent Violent Felony Offender ☐ Probation Violator

And ☐ JUVENILE OFFENDER - Crime date _____ Must be housed in a secure facility of NYS Office of Children and Family Services.

☐ Pay a fine of \$ _____ from inmate funds or serve a term of _____ days.

☒ Pay a Mandatory Surcharge of \$ 150 from inmate funds.

☒ Pay a Crime Victim Fee of \$ 5.00 from inmate funds.

CONCURRENTLY with

4804-98

This sentence shall run:

CONSECUTIVELY to _____

The defendant is hereby committed to the custody of the New York City Department of Correction to be delivered to and incarcerated in the appropriate correctional facility until released according to law.

REMARKS:

No Weapon

Type of drug or weapon: _____

A true extract of the minutes.

Ronel S. Stuntz

Court Clerk

1st copy-Dept. of Correction 2nd copy- court file 3rd copy- Appellate Division (if required)

Commitment & Probation
 Report Rec'd by NYC Dept.
 of Correction

Correction Officer

Shield No.

NEW YORK STATE SUPREME COURT

Sentence and Order of Commitment Kings County, Criminal Term

99A 4356

The People of the State of New York

vs

JOSE MORALES

Defendant

Sex	11-6-77	8.3.0.4.6.28.2
D.O.B.		NYSID

☐ S.C.I.

Indictment No. 4804-98

Date 7-10-99 Part 19

Justice Dowdy

Court Reporter

KM5 Napoli

The defendant having been convicted of the crime/s of:

it is the Judgment of the Court that the defendant is hereby sentenced to a term of imprisonment:

☐ Adjudicated a Youthful Offender

CRIME	No. of Counts	Counts are to run		Minimum Years	Maximum Years	<input type="checkbox"/> Indeterminate <input type="checkbox"/> Determinate <input type="checkbox"/> Definite (Specify: days, mos. or yrs)
		Concur.	Consec.			
1. <u>Att. 3rd</u>		<input type="checkbox"/>	<input type="checkbox"/>	<u>1</u>	<u>3</u>	
2. _____		<input type="checkbox"/>	<input type="checkbox"/>			
3. _____		<input type="checkbox"/>	<input type="checkbox"/>			
4. _____		<input type="checkbox"/>	<input type="checkbox"/>			
5. _____		<input type="checkbox"/>	<input type="checkbox"/>			

The sentence on all Crimes is to run CONCURRENTLY unless otherwise indicated:

Crimes numbered _____ shall run CONSECUTIVELY.

☐ Sentenced to Parole Supervision (410.91 CPL)☐ Designated a SEX OFFENDER
 And: ☐ Second Felony Offender ☐ Second Violent Felony Offender ☐ Persistent Felony Offender
☐ Persistent Violent Felony Offender ☒ Probation Violator
☐ JUVENILE OFFENDER - Crime date _____ Must be housed in a secure facility of NYS Office of Children and Family Services.And ☐ Pay a fine of \$ _____ from inmate funds or serve a term of _____ days.☐ Pay a Crime Victim Fee of \$ _____ from inmate funds.

This sentence shall run:

CONCURRENTLY with

CONSECUTIVELY to

The defendant is hereby committed to the custody of the New York City Department of Correction to be delivered to and incarcerated in the appropriate correctional facility until released according to law.

REMARKS: _____

Type of drug or weapon: _____

A true extract of the minutes

1st copy- Dept. of Correction2nd copy- court file3rd copy- Appellate Division (if required)

Court Clerk



Commitment & Probation Report Rec'd by NYC Dept. of Correction

Correction Officer

7327

Shield No.

EXHIBIT D

Department of Correctional Services

Inmate Information

Inmate Information Data Definitions are provided for most of the elements listed below. When a detailed definition is available for a specific element, you may click on the element's label to view it.

Identifying and Location Information As of 04/07/08

<u>DIN (Department Identification Number)</u>	99A4356
<u>Inmate Name</u>	MORALES, JOSE
<u>Sex</u>	MALE
<u>Date of Birth</u>	11/06/1977
<u>Race / Ethnicity</u>	HISPANIC
<u>Custody Status</u>	RELEASED
<u>Housing Releasing Facility</u>	WILLARD
<u>Date Received (Original)</u>	08/09/1999
<u>Date Received (Current)</u>	01/29/2007
<u>Admission Type</u>	
<u>County of Commitment</u>	KINGS
<u>Latest Release Date / Type (Released Inmates Only)</u>	05/22/07 PAROLE DIV OF PAROLE

Crimes of Conviction

If all 4 crime fields contain data, there may be additional crimes not shown here. In this case, the crimes shown here are those with the longest sentences.

As of 04/07/08

Crime	Class
ATT ROBBERY 2ND	D
ATT CRIM SALE CONTR SUBSTANCE 3RD	C

Sentence Terms and Release Dates

Under certain circumstances, an inmate may be released prior to serving his or her minimum term and before the earliest release date shown for the inmate.

As of 04/07/08

<u>Aggregate Minimum Sentence</u>	003 Years, 05 Months, 02 Days
<u>Aggregate Maximum Sentence</u>	004 Years, 00 Months, 00 Days
<u>Earliest Release Date</u>	
<u>Earliest Release Type</u>	
<u>Parole Hearing Date</u>	
<u>Parole Hearing Type</u>	FULL MAXIMUM
<u>Parole Eligibility Date</u>	08/24/2002
<u>Conditional Release Date</u>	NONE
<u>Maximum Expiration Date</u>	08/28/2008
<u>Maximum Expiration Date for Parole Supervision</u>	
<u>Post Release Supervision Maximum Expiration Date</u>	08/28/2008
<u>Parole Board Discharge Date</u>	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
CAMILLE SMITH, JERRY PROVINCE, SAMUEL
RAMOS, AND JOSE MORALES, suing on behalf
of themselves and all others similarly situated,

Plaintiffs,

-against-

DAVID PATERSON; BRIAN FISCHER; GLENN
GOORD; RICHARD DESIMONE; and JOHN DOES,
Nos. 1-150 (members of the New York State Department
of Correctional Services whose names are presently
unknown to plaintiff),

Defendants.
-----X

08 Civ. 3313 (SHS)

DECLARATION OF JOSE MORALES AND SUPPORTING EXHIBITS

LEVENTHAL & KLEIN, LLP.
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Brooklyn, New York 11201
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Attorneys for the Plaintiffs